

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.Rev.Pet.No. 4557 of 2006()

**CRA.495/2005 of ADDL.SESIONS COURT, (ADHOC), ERNAKULAM
CC.974/2001 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR**
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REVN. PETITIONER: APPELLANT/ACCUSED

**K.P.POULOSE, AGED 55,
S/O.PAILY, KOZHIKKATTU VEEDU,
ALLAPRA P.O., PERUMBAVOOR.**

**BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM**

RESPONDENTS: COMPLAINANT/STATE

**1. A.K.ELSON, AYYAMBILLY VEEDU,
THURAVOOR P.O., ANGAMALY.**

**2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY ADV. SRI.BIJU .C. ABRAHAM

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.

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Crl.R.P. No. 4557 OF 2006
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Dated this the 2nd day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.974/2001 on the file of the J.F.C.M., Perumbavoor challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned counsel for the first respondent.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected

the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner.

5. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, the revision petitioner is directed to pay a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. A sum of Rs.45,000/- was already paid when the matter was pending in the lower appellate court. Pursuant to interim orders passed by this court, the counsel for the revision petitioner submits that a sum of Rs.75,000/- has been paid. If so, what remains is only Rs.30,000/- for which he prayed for two months time. Eventhough the learned counsel for the 1st respondent opposed the prayer, I am inclined to grant the said request. Accordingly, if the revision petitioner pays or deposits before the trial court the balance amount of Rs.30,000/- for payment to the 1st respondent complainant within two months from

today, he need only undergo imprisonment till rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall suffer simple imprisonment for three months by way of default. The 1st respondent shall be entitled to withdraw the amounts already deposited.

This Revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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